



OFFICE OF CHIEF COUNSEL FOR ADVOCACY

U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

DOCKET FILE COPY ORIGINAL

RECEIVED

JAN 13 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

In the Matter of

Redevelopment of Spectrum to  
Encourage Innovation in the  
Use of New Telecommunications  
Technologies

)  
)  
) ET Docket No. 92-9  
)  
) RM-7981  
) RM-8004

---

Comments of the Chief Counsel for Advocacy  
of the United States Small Business Administration  
on the Third Notice of Proposed Rulemaking

---

Thomas P. Kerester, Esq.  
Chief Counsel  
Barry Pineles, Esq.  
Assistant Chief Counsel  
Office of Advocacy  
United States Small Business  
Administration  
409 3rd Street, S.W.  
Washington, DC 20416  
(202) 205-6532

January 13, 1993

No. of Copies rec'd  
List A B C D E

044

RECEIVED

JAN 13 1993

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Redevelopment of Spectrum to	)	ET Docket No. 92-9
Encourage Innovation in the	)	
Use of New Telecommunications	)	RM-7981
Technologies	)	RM-8004

---

Comments of the Chief Counsel for Advocacy  
of the United States Small Business Administration  
on the Third Notice of Proposed Rulemaking

---

I. *Introduction*

Personal communication services (PCS) represent the newest step in the evolution of telecommunications technology. PCS constitutes the melding of wireless radio transmission with the ubiquity of wireline telephones. Individuals will not be tied to a device with a telephone number; rather, telephone users will have the same number irrespective of where they are or what device they use for communications. Nearly seamless communication will occur with a device only slightly larger than the medallions on Star Trek: The Next Generation. Conventional wireline telephone service will seem as antiquated as the first vacuum tube computer.

The Federal Communications Commission (FCC or Commission) has recognized the nearly unlimited potential of PCS, both as competitor and complement to current wireline and cellular telephone systems. However, the development of PCS must overcome one of James Clerk Maxwell's undeniable laws -- the amount of electromagnetic spectrum capable of carrying voice and data communications with current or foreseeable technology is limited. The amount of available spectrum is further constricted by the FCC's previous allocation of large spectrum segments for specific users. Absent advances in sharing of spectrum, the development of PCS will require the reallocation of spectrum from current users. To accomplish this task, the Commission initiated two related rulemakings.

The instant rulemaking, In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, First Report and Order and Third Notice of Proposed Rulemaking, ET Docket No. 92-9 (September 17, 1992) (NPRM) deals with matters related to the mechanics involved in relocating spectrum from current users. The second rulemaking, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communication Services, Notice of Proposed Rulemaking, Gen. Docket No. 90-134 (August 14, 1992)

concerns the development of an appropriate regulatory structure for the licensing of PCS providers.<sup>1</sup>

The FCC finds that the "public interest will be served best by making spectrum in the 2 GHz band available for emerging technologies." NPRM at ¶ 14. Therefore, the Commission orders that 220 MHz of spectrum in the 2 GHz band be reallocated to use by emerging communication technologies, i.e., a variety of services whose ultimate aim is the development of a PCS network. *Id.* at ¶ 1. To achieve this goal, the Commission is ordering that emerging technology licensees may involuntarily relocate current user of the 2 GHz band.<sup>2</sup> *Id.* at ¶ 22. The Office of Advocacy fully endorses the findings of the Commission in this regard.

## II. *The NPRM*

The Commission issued the NPRM to receive comments on the mechanics of actually relocating current 2 GHz users. Specifically, the Commission requests input on the time-frame for reaching voluntary agreements between new and current licensees, the transition period required for the relocation, be it voluntary or involuntary of the current licensee, and the type of

---

<sup>1</sup> The Office of Advocacy filed extensive comments with the Commission on issues raised in that notice.

<sup>2</sup> Public safety and special emergency radio services that use the 2 GHz band will be exempt from involuntary relocation. NPRM at ¶ 27.

comparable facilities that the emerging technology licensee must provide to the current users of the 2 GHz band. *Id.* at ¶ 24-28. Finally, the FCC asks for comments on whether tax certificates can be utilized to defer any capital gains that may be realized through the relocation of the current user's facilities. *Id.* at ¶ 37.

The Commission recognizes that the proposed rule may have a significant economic impact upon a substantial number of small entities. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601-12 (RFA), the FCC prepared a regulatory flexibility analysis which noted both potential benefits and costs associated with reallocation of the spectrum. The Commission also requested comments on transition periods and resolution of disputes that may reduce any burdens on small entities. The FCC specifically requested comments on its entire analysis.

The Office of Advocacy concurs with the FCC's finding that the proposed rule may have a significant economic impact upon a substantial number of small entities. However, the Office of Advocacy is disappointed that the Commission did not take its analysis further and compare the size and resources of current users with those of potential future licensees. Furthermore, the Office of Advocacy believes that the Commission overlooked alternatives that may reduce the initial burdens faced by

emerging technology licensees (many of whom will be small businesses) in constructing new telecommunication networks.

#### IV. Alternatives to the Proposed Rule

The Commission's fundamental thesis in this docket is that current licensees should not suffer from subsequent actions of the Commission. Current licensees obtained their licenses and made substantial investment in equipment based on the belief that their license (assuming they met the conditions of the license) would not be revoked. Now the current licensees are facing rule changes beyond their control and the Commission, in fairness to them, believes that they should not suffer.

The FCC's thesis appears to be equitable. Those entities that benefit from the reallocation will pay those that lose from the reallocation. However, this analysis fails to examine the potential problems associated with reallocation and the current financial resources of all parties involved.

Most users of 2 GHz that may be subjected to involuntary relocation are electric and water utilities, oil and natural gas pipelines, or railroads. They use their fixed-point microwave transmission devices to monitor safety along their systems and, in the case of railroads, maintain communication with moving vehicles. These entities have two things in common -- they are

large or extremely large businesses and most of them recoup costs through regulated rates.

In contradistinction, many of the potential users of the 2 GHz spectrum are small businesses who lack abundant amounts of capital. Even after they begin receiving revenue from their networks, these enterprises probably will not have monopoly customers upon which to recoup their investments.<sup>3</sup> Thus, the requirement that these small businesses pay the expenses of large businesses represents a significant burden not analyzed by the FCC. More importantly, the substantial capital needed to move current users will delay or inhibit the deployment of emerging technologies -- something that is antithetical to the Commission's finding in this docket.

The Office of Advocacy requests that the Commission examine alternatives to the current proposal of having emerging technology licensees pay for relocation. If utilization of the 2 GHz band is in the public interest, then the public should pay for the relocation.

---

<sup>3</sup> In our comments on the rules for establishing PCS services, the Office of Advocacy recommended a minimum of five licensees per licensing area to ensure maximum competition among PCS providers. In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-134, Comments of the Chief Counsel for Advocacy on the Notice of Proposed Rulemaking at 9-11 (November 9, 1992).

One possible method for this to occur would be for the current licensees to pay for relocation and recoup those costs through the rate regulation process. This would permit small businesses<sup>4</sup> to focus their scarce capital on the actual construction of the system. Current licensees would not suffer because their increased costs would be absorbed, for the most part, by their customers.<sup>5</sup> At some point after the emerging technology licensees put their systems in operation, the Commission may require them to reimburse the former 2 GHz licensees.

The Office of Advocacy believes other alternatives, such as use of tax certificates or other types of deferred payment schedules, must be examined to reduce the substantial costs faced by small businesses in developing emerging telecommunications technologies. Before issuing a final rule on the relocation process, the Office of Advocacy asks the Commission to perform a final regulatory flexibility analysis that examines cost-sharing

---

<sup>4</sup> To the extent that emerging technology licensees are Tier 1 local exchange carriers, the largest interexchange or cellular carriers, or large multiple system cable operators, then they have the resources and the current customer base to pay for the relocation. In the case of Tier 1 LECs, they are the telecommunication equivalent of 2 GHz licensees subject to involuntary relocation.

<sup>5</sup> Some may argue that the customers of the current 2 GHz licensees have paid for the current fixed-point systems and should not have to pay again, especially when they derive no benefit. However, the customers of current licensees (consumers and businesses) are likely users of the new services as well. Thus, they will derive some benefit from the reallocation.



methods that reduce capital costs faced by small businesses in the PCS arena.

V. *Conclusion*

The Office of Advocacy agrees with the Commission that a dawn of a new era in telecommunications technology is at hand. The Office of Advocacy believes that the FCC should take actions to ensure the rapid deployment of PCS technology. The FCC also should adopt policies that, through the reduction of burdens on small businesses, enhances the opportunity for small business participation in a field with a potential of sixty million customers. One possible alternative is to delay or eliminate the costs associated with the relocation of current 2 GHz. While the Office of Advocacy recognizes the controversial nature of this option, the Office of Advocacy believes that the Commission has an obligation under the RFA to examine this and other alternatives to the current scheme in which emerging technology licensees will bear the full burden of relocating current users.

Respectfully submitted,



Thomas P. Kerester, Esq.  
Chief Counsel for Advocacy



Barry Pineles, Esq.  
Assistant Chief Counsel